

ORDINANCE #2012-5C

AN ORDINANCE AMENDING AN ORDINANCE entitled, “Code of the Borough of Beach Haven, County of Ocean, State of New Jersey, (2000)” as the same in Chapters 212 and 141 apply to the outdoor display of merchandise for sale or merchandise used for rental purposes in the business and marine commercial districts.

THE MAYOR AND COUNCIL OF THE BOROUGH OF BEACH HAVEN DO ORDAIN:

SECTION I

PURPOSE

The purpose of this Ordinance is to permit, under certain circumstances, the outdoor display of merchandise offered for sale and products offered for rent in the Business District and Marine Commercial District of the Borough of Beach Haven and to establish regulations concerning such outdoor displays. This Ordinance is prepared and adopted as part of a Settlement Agreement In The Matter of David Colman, individually and t/a Island Sun Trading Company, Plaintiff v. The Borough Council of the Borough of Beach Haven and the Borough of Beach Haven, a municipal corporation of the State of New Jersey, Superior Court of New Jersey, Law Division, Ocean County, Docket No. L-2582-11. That lawsuit challenged Ordinance No. 2011-14C which modified the manner of the outdoor display of merchandise for sale in the Borough. This Ordinance amends both the Zoning Ordinance and the Peace and Good Order Ordinance of the Beach Haven Code. The Zoning Ordinance of the Borough of Beach Haven is a permissive Ordinance and any use not expressly permitted in the Ordinance is prohibited. The amendment to §212-14E(2) permits the uses expressly set forth in **SECTION II** of this Ordinance.

SECTION II

§212-14E(2) of an Ordinance entitled “**Code of the Borough of Beach Haven, County of Ocean, State of New Jersey, (2000)**” is hereby repealed and in lieu instead thereof of the following is adopted:

(2) Outdoor display of merchandise and products offered for sale or rent and the outdoor consumption of food offered for sale.

(A) The outdoor display of merchandise or products offered for sale or for rental shall be permitted on property owned or leased and operated by the licensed business entity occupying the premises on which the items are being displayed. The display of items will be permitted pursuant to the regulations established in §141-4 of the Code of the Borough of Beach Haven and such items may be displayed both on the property of the merchant not burdened by the public right of way and also on the public right of way contiguous to the property pursuant to the regulations in §141-4 of the Beach Haven Code.

(B) The license referred to in paragraph A above is a Mercantile License applied for and issued by the Borough of Beach Haven pursuant to the provisions of Chapter 20 of the Code of the Borough of Beach Haven.

(C) The purpose of this Ordinance is to encourage appropriate commercial utilization of commercial property

situate in the Business District and the Marine Commercial District of the Borough of Beach Haven. Such development shall be balanced with the esthetic visual impact on visitors to the Borough of Beach Haven, applying the standard of developing an attractive high quality seashore residential resort community, avoiding a garish atmosphere and retaining for the Borough of Beach Haven a reasonable commercial atmosphere of decorum balanced by the primary residential nature of the Borough. The further policy and purpose of the regulations and permission of outdoor display is to avoid congestion and obstruction of pedestrian traffic and the avoidance of visual distraction to drivers of motor vehicles on the public streets in the Business District and the Marine Commercial District which distraction could cause unsafe driving. A further purpose of this Ordinance is to avoid congestion and obstruction of pedestrian traffic that occurs or may occur as a result of the cyclical transport of rented recreational items, often of substantial size and weight, in and out of doors fronting on the public right of way.

(D) Merchandise or products offered for rental on an hourly, daily, weekly or other short period of time for recreational use, *e.g.* bicycles, quadracycles, surf boards, kayaks, rafts, floatation devices, boogie boards, and all items of a similar nature may be displayed on private property outside in connection with any licensed commercial business in the Business District or the Marine Commercial District.

(3) Outdoor consumption of Food Stuffs.

(A) Businesses offering food stuffs within the interior of the licensed commercial building for on or off premises consumption may for the convenience of their customers place tables and chairs outside of the building where the business is being operated for the consumption of food stuffs sold by such business. The tables and chairs shall be offered only for the convenience of customers who have purchased the food stuffs inside of the commercial building and wish to consume the same at their leisure outside of the building. The business shall maintain adequate trash and garbage receptacles and shall be responsible for policing the area to see to it that their customers utilize the appropriate trash receptacles.

(B) The tables and chairs may be placed on the lot owned by the business or in the public right of way provided that the area of the public right of way remaining unobstructed shall be in accordance with §141-4C of the Beach Haven Code.

(C) Any business placing tables and chairs at the exterior of the building may not place any tables and chairs in addition to those permitted in the business property pursuant to its Site Plan. The Licensee may transport tables and chairs from the interior of the business and place them

in the out of doors so long as the entire seating capacity for the business does not exceed that approved by the Planning Board or the Land Use Board of the Borough of Beach Haven in granting site plan approval. If no site plan approval has previously been granted, the total number of tables and chairs, both inside and outside, to be permitted shall not exceed the number calculated by determining the total number of tables and chairs which would be permitted in the building under the current provisions of the various codes of the Borough of Beach Haven. Any business which, prior to the adoption of this Section, has maintained tables and chairs at the exterior of the building maintaining the licensed premises may within thirty (30) days of the publication of this Ordinance on final passage apply to the Zoning Officer of the Borough of Beach Haven and shall be entitled to a certificate of non-conformity of the requirements contained in this Ordinance and in Chapter 141 of the Beach Haven Code.

(D) No outdoor display permitted pursuant to this section shall be placed in any required parking area so as to diminish in any way the parking spaces provided for the commercial building exercising the authority for outdoor display permitted by this section.

(E) Any outdoor display of merchandise for sale in the licensed business premises shall not cover an area in excess of sixty (60) square feet having maximum dimensions of 3' x 20'. In addition to the foregoing the sixty (60) square feet shall be located in an area not exceeding three (3) feet in width and running parallel and contiguous to the front property line of the property on which the display is located where that property line meets the public right of way. The restriction contained in this paragraph shall not apply to the placement of tables and chairs as permitted pursuant to paragraphs (A) through (C) above.

(F) The outdoor displays may also be permitted on porches, decks or raised walkways subject to and pursuant to the regulations contained in §141-4 of the Beach Haven Code.

(G) The display of merchandise, goods and property for sale or for rental displayed in an area located within the vertical plane extending from any permanent roof structure to the ground or a deck located entirely within the boundary of the licensee's property shall not be considered an outdoor display but shall be subject to all of the requirements of Chapter 212 of the Beach Haven Code.

(H) The outdoor display of merchandise for sale or for rent in the side and rear yards of any licensed business in the Borough of Beach Haven shall not be permitted unless the business has received Site Plan Approval for such display or within thirty (30) days of the final passage of this

Ordinance has secured from the Building Department of the Borough of Beach Haven a Certificate of Non-conformity.

SECTION III

§141-4 of an Ordinance entitled “**Code of the Borough of Beach Haven, County of Ocean, State of New Jersey, (2000)**” is hereby repealed and in lieu and instead thereof the following is hereby adopted:

§141-4. Regulations governing the outside display of merchandise and outside consumption of food in the Business and Marine Commercial Districts.

A. Special Occasion Sidewalk sales by Resolution

The Governing Body of the Borough of Beach Haven may, for special occasions and for special reasons, authorize, by Resolution duly adopted, all businesses in the Business District and the Marine Commercial District of the Borough of Beach Haven to conduct sales of merchandise offered by the business, holding a duly issued Mercantile License, on the sidewalk area located contiguous to the commercial business enterprise operated on the property. No such Resolution shall apply to less than all businesses uniformly and no businesses in the Borough of Beach Haven shall be treated in a discriminatory manner when seeking to utilize the special occasion sidewalk sales authorized by Resolution. The Resolution shall authorize the use of the sidewalk area contiguous to the business enterprises in the Borough for special days or special events only, setting forth the time and date of the authorized sales. Any sidewalk sales authorized by Resolution shall comply with unobstructed sidewalk area requirements as herein below set forth in paragraph C below in this section.

The Resolution authorizing the sidewalk sale may contain such additional restrictions and limitations as the governing body may deem appropriate in order to protect the public health, safety, morals and welfare of the tax payer citizens, residents and visitors of and to the Borough of Beach Haven. In addition the Governing Body may in such Resolution relax any of the rules and regulations contained in sub-paragraphs 1 through 17 inclusive in Paragraph D below.

B. Permits for outside display of merchandise for sale or for rent issued by the Beach Haven Code Enforcement Officer.

The Code Enforcement Officer of the Borough of Beach Haven is hereby authorized to issue permits for the outside display of merchandise for sale or merchandise for rent in the Borough of Beach Haven as authorized pursuant to §212-14 of the Beach Haven Code under the following terms and conditions:

(1) Any business in the Borough of Beach Haven in the Business District or the Marine Commercial District wishing to utilize any portion of the public right of way or any private property abutting such business for the outside display of merchandise for sale or for rent shall first obtain a permit from the Code Enforcement Officer of the Borough of Beach Haven.

(2) The permit shall be issued pursuant to an application made by the owner of a licensed business, holding a current mercantile license, for the operation of the business on the location where the permit is sought. The application shall be made on a form provided by the Code Enforcement Officer. The application shall be accompanied by a current survey, containing a raised seal, made by a licensed surveyor of the State of New Jersey showing the area between the vertical face of the curb line of the street and the front of the building where the licensed business is conducted showing the area between the sidelines as that area is defined in Chapter 212, Zoning of the Borough of Beach Haven. The survey shall show in detail the location of the existing curb, sidewalk and any open space between the vertical face of the curb and the front of the building.

The survey shall show the area proposed by the licensee to be utilized for outdoor display as authorized by §212-14E(2) of the Beach Haven Code.

(3) The application shall be accompanied by a fee of One Hundred Dollars (\$100.00) and a Certificate of Insurance showing that the Borough of Beach Haven is an additional insured on the mercantile owner's policy which shall have limits of not less than One Million Dollars (\$1,000,000.00).

(4) Prior to the issuance of any such permit, the Code Enforcement Office shall inspect the curb and sidewalk shown on the survey and if the same is in disrepair or is not equal to the specifications required by the Codes of the Borough of Beach Haven, the curb and sidewalk area shall be repaired and brought up to meet the specifications and requirements of the Borough of Beach Haven before any permit shall be issued.

(5) Any permit issued by the code Enforcement Officer shall be effective for the calendar year in which it is issued.

(6) The terms and conditions under which any permit is issued may be enforced by the Code Enforcement Officer or by any member of the Beach Haven Police Department by filing a complaint in the Municipal Court of the Borough of Beach Haven pursuant to §1-16 of the Beach Haven Code. Prior to the Code Enforcement Officer filing such a complaint, however, the Code Enforcement Officer shall give the Licensee written notice of the violation and the licensee shall have five (5) calendar days to correct the violation and for a failure to do so the Code Enforcement Officer shall file the appropriate complaint with the Municipal Court of the Borough of Beach Haven.

(7) Upon conviction by the Judge of the Beach Haven Municipal Court the licensee shall, in addition to any fine or other penalty imposed by the Court have the permit issued pursuant to §141-4B of the Code of Beach Haven, revoked and such licensee shall be barred for a period of one (1) calendar year following the calendar year in which the conviction and revocation occurs from making application for another outside display of merchandise permit.

C. Required Unobstructed Sidewalk Area:

(1) In the Borough of Beach Haven Business District located on both sides of Bay Avenue in a southwestwardly direction from the southwesterly line of Leeward Avenue to the southwesterly boundary line of the Borough of Beach Haven the user of any public right of way area shall maintain an open and unobstructed sidewalk as specified by the Borough Engineer, four feet (4') in width and running from the northeasterly boundary line of the property in which the business enterprise is conducted to the southwesterly boundary line of the property. The sidewalk shall be designed and constructed pursuant to specification issued by the Borough Engineer and a concrete curb whose location and specifications are specified by the Borough Engineer shall be in place prior to the issuance of any permit issued pursuant to Paragraph B above;

(2) In that portion of the Business District other than as set forth in Paragraph 1 above the use of any of the public right of way for outdoor display shall leave an open and unobstructed sidewalk area extending a right angles and perpendicular to the curb face a distance of eight feet (8')

toward the building in which the business enterprise is conducted.

(3) In the Marine Commercial District and that portion of the Business District not fronting on Bay Avenue an unobstructed sidewalk area shall be provided as herein above set forth in Paragraph 1.

D. Rules and Regulations Governing the outside display of merchandise for sale or rental.

The following rules and regulations in addition to any rules and regulations hereinabove set forth in §141-4 and hereinafter set forth in §212-14E(2) of the Code of the Borough of Beach Haven;

(1) No outdoor display shall display clothing, nor food stuffs.

(2) Plants, cut flowers, greens and other such vegetative matter may be used as decorative material in a licensed business outside display even though such items are not sold in the licensed store.

(3) Merchandise displayed in the public right of way area may not extend more than thirty-six (36) inches into the right of way area from the property line of the licensed premises, **PROVIDED, HOWEVER**, that the open space required by §141-4C above shall not be reduced in width nor encroached upon.

(4) No outdoor display shall obstruct the storefront entrance granting ingress and egress to the licensed commercial establishment.

(5) No outdoor display of merchandise shall contain front lighting, back lighting nor lighting within the display.

(6) No power lines or extension cords are permitted in any outdoor display of merchandise or rental goods.

(7) No outdoor display of merchandise shall contain any moving attractive devices or exhibits.

(8) No outdoor display will be permitted to have more than one example of each of the different types of merchandise displayed for sale.

(9) The goods and merchandise in the outdoor display shall not be marketed with sales transactions occurring outdoors, such transactions shall take place only within the confines of the licensed building.

(10) No signs shall be permitted within or abutting the area where outdoor display of merchandise is permitted.

(11) Packing cartons, cardboard boxes, bins and the like are not permitted in the outdoor display area.

(12) All merchandise and goods displayed on the exterior of any licensed retail establishment shall be entirely removed from outside display no later than 11:00 p.m., every evening local time prevailing and shall not be redisplayed nor redeployed prior to 8:00 a.m. local time prevailing.

(13) All merchandise and goods displayed on the exterior of any licensed retail establishment shall be properly anchored, secured or stored in such a manner as to avoid shifting or movement of the same.

(14) Vending Machines. No vending machines for the sale of any products save newspapers shall be permitted in the public right-of-way nor shall they be permitted between the face of any commercial building and the paved portion of the street. Any outdoor vending machines other than for the sale of newspapers shall be placed on the property owned by the business placing the same in either a side or rear yard and not between the face of any building and the public street.

(15) Any business wishing to display decorative or advertising flags on or over the public right-of-way must mount the flags so that, when hanging in their lowest position, there is a clear unobstructed space of not less than seven feet between the sidewalk and the lowest portion of the flag. If feather typed flags are displayed, they shall be mounted in such manner that when fully extended the flag shall not extend beyond the circumference of the container in which the pole is mounted. Businesses shall be permitted to display one flag for the first 20 feet of street frontage upon which the business operates and one additional flag for each additional 20 feet or part thereof of frontage from which the said business actually operates; **PROVIDED, HOWEVER,** that there shall be no limitation as to the number of American flags which any business may wish to display, provided that they are displayed in accordance with this section so as not to interfere with pedestrian movement or traffic.

(16) Chairs and tables for the outside consumption of food brought from the interior of the licensed business pursuant to §212-14E(3)(C) as herein permitted shall be permitted only between the hours of 7:00 a.m. and 11:00 p.m., local time prevailing; such chairs and tables shall be replaced in the interior of the business operating on the site. Such tables and chairs shall not be stored outside of the building but must be stored or redistributed for services of food stuffs within the interior of the building.

(17) No outdoor display shall be permitted from tables.

SECTION IV

All Ordinances or parts of Ordinances inconsistent herewith are repealed to the extent of such inconsistency.

SECTION V

If any word, phrase, clause, section or provision of this Ordinance shall be found by any Court of competent jurisdiction to be unenforceable, illegal or unconstitutional such word, phrase, clause, section or provision shall be severable from the balance of the Ordinance and the remainder of the Ordinance shall remain in full force and effect.

SECTION VI

This Ordinance shall take effect upon publication thereof after final passage according to law.

CERTIFICATION

I, Sherry Mason, RMC, Municipal Clerk of the Borough of Beach Haven, do hereby certify that the foregoing Ordinance was duly adopted on final reading by the Municipal Council of the Borough of Beach Haven at a regular meeting held on the 17th day of April, 2012, a quorum being present and voting in the majority.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal this 17th day of April, 2012.

Sherry Mason, RMC, Municipal Clerk

First Reading: *March 22, 2012*
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Passage: ***April 17, 2012***
Final Publication *April 18, 2012*
Effective: *May 8, 2012*

Shackleton & Hazeltine
Borough Solicitors
Ship Bottom, NJ 08008